



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

May 20, 1955

Hon. Garland A. Smith, Chairman  
Board of Insurance Commissioners  
International Life Building  
Austin, Texas

Opinion No. MS-214

Re: Authority of the  
Board of Insurance Commissioners  
to approve a rating for "Highly  
Protected Risks."

Dear Mr. Smith:

You have submitted a request to this office concerning whether the Board of Insurance Commissioners can approve a new rating plan for "Highly Protected Risks."

The statutory provisions of the Insurance Code relating to the question are as follows:

"Art. 5.25. Board Shall Fix Rates

"The Board of Insurance Commissioners shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Board shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. . . . Said Board shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Board to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or subdivisions of the State."

"Art. 5.26. Maximum Rate Fixed

"A maximum rate of premiums to be charged or

collected by all companies transacting in this State the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the Board. . . ."

"Art. 5.29. Schedule and Report

"The rates of premium fixed by said Board in pursuance of the provision of this subchapter shall be at all times reasonable and the schedules thereof made and promulgated by said Board shall be in such forms as will in the judgment of the Board most clearly and in detail disclose the rate so fixed and determined by said Board to be charged and collected for policies of fire insurance. Said Board may employ and use any facts obtainable from and concerning fire insurance companies transacting business in this State, showing their expense and charges for fire insurance premiums for any period or periods said Board may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premiums for fire insurance. The said Board in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms, privileges and conditions which in anywise affect such rates. . . ."

"Art. 5.31. Change or Limit of Rate

"Said Board shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty (30) days' notice. . . ."

"Art. 5.34. Revising Rates

"The Board shall have authority after having given reasonable notice, not exceeding thirty (30) days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this subchapter. . . ."

We think it is clear from the foregoing statutes that the Board of Insurance Commissioners has the duty and responsibility as well as the power and authority to determine, fix, and prescribe such rates, including a maximum rate, of premiums to be charged and collected by fire insurance companies transacting business in this State as are adequate, fair, just and reasonable and which are not arbitrary, capricious, discriminatory, or confiscatory as to any class of insurer, to the end that equitable and reasonable insurance rates may be established. We think that the standards applicable to rate fixing by the Board are equally applicable to risk classification and that, additionally, the classification of risks must be based upon a real and substantial difference.

We have reviewed the provisions of the proposed plan and have found nothing therein which, on its face, appears to be arbitrary, capricious, discriminatory, or confiscatory. The new risk proposed appears to be based upon a real and substantial difference with relation to presently established risks. However, whether the proposed rating plan fully meets these standards is a question which can be finally resolved only upon the application of myriad facts to the proposed risk plan. The determination of such facts and the nature of their applicability to the required standards must be made by the Board of Insurance Commissioners. If the Board determines that the proposed plan meets the required standards applicable to the classification of risks and the fixing of premium rates, then the Board could approve and adopt the proposed plan.

APPROVED:

J. Fred Jones  
State Affairs Division

J. C. Davis, Jr.  
Reviewer

L. P. Lollar  
Reviewer

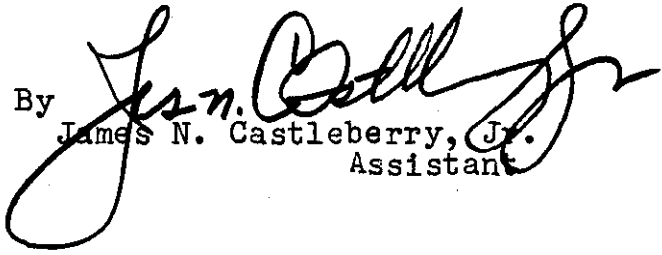
Robert S. Trotti  
First Assistant

JNC:wb

Very truly yours,

JOHN BEN SHEPPERD  
Attorney General of Texas

By

  
James N. Castleberry, Jr.  
Assistant